XI-HC—78

A.F.R. (20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. App. 1164 सन् 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Cr. Appeal No. 1164/2001

Appellant (In Jail) — Narsingh, s/o Konda, aged about 37 years, R/o village: Temri, Police Station: Nandghat, District-Durg (Chhattisgarh)

Vs.

Respondent — State of Chhattisgarh, through the Police Station, Nandghat, District-Durg, (Chhattisgarh)

Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure

DIVISION BENCH:
Hon'ble Shri L. C. Bhadoo, &
Hon'ble Shri Sunil Kumar Sinha, JJ.

ORAL JUDGMENT
(26.7.2007)

L.C.Bhadoo, J.

Shri Vishnu Koshta, counsel for the appellant.

Shri D.K.Gwalre, Government Advocate for the State.

Heard.

By this appeal, filed under Section 374(2) Cr.P.C., the appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 23.11.2001, whereby, the learned Second Additional Sessions Judge(FTC),

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Bemetara, in S.T. No.319/2000, after holding the accused/appellant guilty for commission of the offence under Section 302 of IPC for causing death of Kunwar Singh, sentenced the appellant to undergo R.I. for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 1 year.

The case of the prosecution in brief is that on 8.8.2000, at about 8.00 a.m., the accused/appellant went in front of the house of Kunwar Singh (since deceased) and called him. On hearing the call of the accused, Kunwar Singh came out of the house. The accused asked Kunwar Singh as to why he has diverted the course of water towards his field from accused field, on which, Kunwar Singh replied that he had not diverted the course of water towards his field. The accused/appellant asked Kunwar Singh that if he had not diverted the course of water, he should go to Mahamaya Temple, say so it firmly before the deity in the temple. On that Kunwar Singh started going towards Mahamaya temple, by the time, hardly he could cover 20 steps, the accused/appellant said you are a liar, abused him in the name of mother and sister and attacked him with *lathi*, as a result of which, Kunwar Singh fell down on the ground. Thereafter, the accused/appellant assaulted Kunwar Singh 3-4 times with *lathi* and ran away from the place of occurrence. The witnesses-Umed and Rewaram lifted Kunwar Singh and took him to his house, family members of Kunwar Singh were

(Q2)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

informed, who were in their agricultural field. They came and took Kunwar Singh to the Primary Health Centre, Temri. The matter was reported to the Police Station Nandghat by his nephew-Lakhan, which was entered in the *Roznamcha Sana* under Ex. P/22. After entering the report in *Roznamcha Sana*, Head Constable–Manmohan Singh was sent to the site. Manmohan Singh, after reaching the site, sent the *Dehati Nalisi* Ex.P/1 to the S.H.O. Based on that, crime No.81/2000 was registered. *Halka Patwari*, prepared the site plan Ex. P/2. The requisition Ex.P/4-A was sent for medical examination of Kunwar Singh, on which, he was medically examined and the medical report Ex.P/4 was prepared by Dr. N.P.Jangde (PW-8). While in the police custody, the accused gave memorandum under Ex.P/6-A. Based on that, Police recovered *lathi*, weapon of offence under Ex.P/7. However, in the meantime, Kunwar Singh succumbed to the injuries in the hospital. The Investigating Officer, after giving notice Ex.P/13 to the *Panchas*, prepared inquest Ex.P/14 on the body of Kunwar Singh. The body of Kunwar Singh was sent for postmortem under Ex.P/12-A, where Dr. S. K. Sharma, (PW-12) conducted the postmortem and prepared the report Ex.P/11. A *baniyan* of the accused was seized under Ex.P/15.

After completion of the investigation, charge sheet was filed against the accused/appellant in the Court of Additional Chief Judicial Magistrate, Bemetara, who in turn, committed the

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

case to the Sessions Judge, Durg from where the learned Second Additional Sessions Judge, Bemetara received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined as many as 14 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the case. In defence, one Shakil Mohammad was examined, who has stated that on the fateful day, Narsingh was going towards the village. He saw that people of Rawat community were chasing him to attack, on which, he asked Narsingh to go to the Police Station and therefore, Narsingh went to the Police Station-Nandghat.

The learned Additional Sessions Judge, after hearing the counsel for respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Vishnu Koshta, learned counsel for the appellant and Shri D.K.Gwalre, Government Advocate for the State.

Shri Koshta has not disputed the homicidal death of Kunwar Singh. Moreover, PW-2- Umed has categorically stated that on the fateful day, at about 9.00 a.m., he saw that the accused attacked the deceased with *lathi* and he saw the incident from a distance of about 15 feet.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The above ocular evidence is corroborated by the evidence of Dr. S.K.Sharma, (PW-12), who has stated that on 9.8.2000, he conducted the postmortem on the body of Kunwar Singh and there were injuries on his body. The peritoneum membrane was damaged, liver was ruptured in the size of 3" x ½" and clotted blood was present in the pelvic cavity, face was in swollen condition and he stated that the cause of death was injuries sustained by Kunwar Singh and the death was homicidal in nature. Therefore, from the ocular and medical evidence, it is established that the death of Kunwar Singh was homicidal in nature.

As far as the involvement of accused/appellant in crime in question is concerned, PW-2- Umed has stated that the deceased as well as the accused/appellant both are known to him. The deceased Kunwar Singh died 2 months prior to the date of his evidence. He saw that the accused attacked the deceased with *lathi*, at about 9.00 a.m. in the street. The place of occurrence, where the accused attacked the deceased with *lathi* was at a distance of about 15 feet from his residence. At that time, he was sitting in front of his house. He reached on the spot when Kunwar Singh already fell down. In cross-examination of this witness, defence has not been able to elicit any circumstance, which discredits the evidence of this independent witness. Moreover, the above evidence of Umed is corroborated by the evidence of Dr.N.P.Jangde (PW-8), who

25

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examined the injuries present on the body of Kunwar Singh and has stated that the following injuries were present on the body:

1. an abrasion on the left cheek,
2. a contusion of stomach at epigastria region in the size of 30 cm x 1cm red in colour. The injury was extending from the lower portion of left shoulder up to stomach.
3. a contusion on throat in size of 8 cm x 1 cm red in colour
4. abrasion on the right elbow joint.

The Doctor has opined that the above injuries could be caused by hard and blunt object within the duration of 4-6 hours.

PW-12, Dr. S.K.Sharma, conducted postmortem and prepared the report Ex.P/12 on 9.8.2000, has also corroborated the evidence of Dr. N.P.Jangde (PW-8) and stated that the mark of *lathi* injury was present on stomach of the deceased, hence, the oral evidence of PW-2- Umend is corroborated by the medical evidence of Dr. N.P.Jangde(PW-8) as well as Dr. S.K.Sharma (PW-12), therefore, the involvement of accused/appellant in crime in question is established beyond reasonable doubts.

Shri Koshta argued that in the present case, a dispute started on the ground that there was altercation between the two that Kunwar Singh had diverted the course of water, which was denied by the deceased-Kunwar Singh and in that process,

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused attacked the deceased with *lathi*. There was no intention of the accused to cause death of Kunwar Singh. He further argued that injuries were not on the vital parts of the body. Only simple injuries were caused on cheek, shoulder and abdominal region, however, there was rupture of liver below the stomach injury. Therefore, from the facts, it cannot be inferred that the accused intended to cause the death of Kunwar Singh. He also argued that initially the offence was registered under Section 323 of IPC and as Kunwar Singh died on the next day in the hospital, the offence under Section 302 of IPC was added.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

In order to appreciate the arguments, advanced by learned counsel for the State, we have perused, medical report and postmortem report and the evidence of Dr. N.P.Jangde (PW-8) and Dr. S.K.Sharma (PW-12).

It is an admitted position that the dispute started on the point that the accused/appellant-Narsingh went to the house of the deceased saying that he had diverted the course of water from accused field towards his field, which was denied by the deceased and there was an altercation, on which, the accused/appellant asked deceased-Kunwar Singh if he is correct, then he should go to the temple and say so before the deity. The deceased readily agreed. When he started going towards the temple, hardly he could cover 20 steps, the

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 8 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant attacked the deceased with *lathi*, saying that he is a liar. He had diverted the course of water and in that process; he inflicted 3-4 injuries. Apparently, 4 injuries were simple in nature; however, corresponding to stomach injury, the liver of the deceased was ruptured.

From the above evidence, it cannot be inferred that the accused, in fact, intended to inflict the injuries on the body of the deceased with the intention to cause his death. Looking to the nature of injuries, the part of the body, where the injuries were inflicted as also the nature of weapon, it cannot be inferred that the accused/appellant inflicted injuries with an intention to cause the death of Kunwar Singh. However, in the manner, in which the accused/appellant attacked the deceased, it can safely be inferred that the accused had knowledge that by inflicting injury with *lathi* on stomach, the accused may likely to cause death, therefore, the offence against the accused/appellant does not extend beyond Section 304 Part II of IPC and for this view, we are fortified in our view by the decision of Apex Court, rendered in the matter of ***Karam Singh Vs. State of Punjab, 1994 SCC (Cri) 64***. In this case also the deceased Nahar Singh was attacked with *lathi*, which was witnessed by PW-2 and it was found that there were 10 injuries on the body of Nahar Singh. There was a lacerated wound on the head but there was no corresponding internal injury. There were contusions on the chest and injury Nos. 5 to 7 resulted in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the fracture of ribs which caused his death. The Doctor admitted that the fracture of ribs could have in turn caused the rupture of the liver and the spleen. The court reached to the conclusion that it is difficult to hold that the appellant intended to cause the injuries to the liver and the spleen which unfortunately proved to be fatal. Ultimately, the court held that the offence against the accused/appellant does not travel beyond Section 304 Part II of IPC.

The facts of the present case are squarely covered by the said decision of the Apex Court.

In the result, the appeal filed by the appellant partly succeeds. The conviction and sentence imposed under Section 302 of IPC is set aside. Instead thereof, the appellant is convicted under Section 304 Part II of IPC and sentenced to undergo R.I. for 7 years.

As per the judgment of trial Court, the accused/appellant is in detention since 9.8.2000 till today, therefore, he shall be entitled for the set off for the period of said detention and other benefits.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

sunita

GRPRJ — FS/246— 2/2007 — 50,000.